



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOO/146357

PRELIMINARY RECITALS

Pursuant to a petition filed January 03, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 07, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (MILES) correctly terminated Petitioner's FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Sharon Thacker, HSPC Sr.
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner completed Six Month Report Form (SMRF) on December 13, 2012. (Testimony of Ms. Thacker; Exhibit 3)

3. On December 14, 2012, MILES sent Petitioner a Notice of Proof Needed, asking for verification of income from Sauced Sports Bar and Pizzeria (herein after referred to as Sauced), with a due date of December 24, 2012. (Exhibit 6)
4. Petitioner filled in Section I of the Employer Verification of Earnings (EVFE) form, indicating that he stopped working at Sauced on August 26, 2012, but Petitioner did not have anyone from Sauced signed the form. Petitioner submitted the unsigned form, which was received on December 26, 2012. (Testimony of Petitioner; Exhibit 4)
5. Staff at MILES attempted to contact Sauced at (262) 880-4727, without success. MILES did not inform Petitioner about the defect in the EVFE form. (Testimony of Ms. Thacker; Testimony of Petitioner; Exhibit 3)
6. On December 31, 2012, MILES sent Petitioner a notice indicating that his FoodShare benefits would be ending effective January 1, 2013, because he did not provide the required verification. (Exhibit 8)
7. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 3, 2012. (Exhibit 1)

DISCUSSION

“Food units certified for 12 months, and subject to reduced change reporting requirements, are required to submit a six-month report form (SMRF) in the sixth month of the certification period. Using the SMRF, these food units are required to report and **verify** the current gross earned and unearned income received by all household members. Self-employment income that has already been averaged does not need to be re-verified, unless a significant change is reported.” (Emphasis added) *Wisconsin FoodShare Manual §6.1.2*

Requests for verification **MUST** be made in writing. Verbal requests are not acceptable and will not stand up in a fair hearing. Workers are required to give the customer notice regarding required verification, when it is due to the agency, and the consequences of not verifying timely.” *Wisconsin FoodShare Manual §1.2.1.2, 7 CFR 273.2(c)(5)*

“The applicant has primary responsibility for providing required verification and for resolving any discrepancies or questionable information. The local agency must assist the applicant in obtaining this verification providing the applicant has not refused to cooperate with the application process.

If all attempts to verify the information have been unsuccessful because the person or organization providing the information has failed to cooperate with the household and agency...and all other sources of verification are unavailable, determine an amount to be used for certification purposes based on the best available information...Best information may include customer statement, oral or written.

*Wisconsin FoodShare Manual §1.2.1.3, 7 CFR 273.2(f)(5);
See also Wisconsin FoodShare Manual §1.2.4.2*

When requested income verification is not timely received, the agency may correctly close the case. *Wisconsin FoodShare Manual §1.2.1.2.*

Petitioner timely submitted the EVFE form, but did not get it signed by his employer. The agency never advised Petitioner of this defect, so he had no opportunity to correct it. Per *Wisconsin FoodShare Manual §§1.2.1.3 and 1.2.4.2* above, MILES had an obligation to assist Petitioner, and so had an obligation to make him aware of the defect.

Further, while MILES attempted unsuccessfully to contact sauces by phone, there is no indication in the record that it tried to confirm the end of Petitioner's employment at sauces by consulting state wage records or the Work Number website. If such information was unavailable, MILES could have accepted Petitioner's statement, oral or written, per *Wisconsin FoodShare Manual* §§1.2.1.3 and 1.2.4.2

In summary, it is found that MILES did not correctly terminate Petitioner's FoodShare benefits because 1) it failed to meet its obligation to assist Petitioner with verification, when it failed to advise Petitioner of the defect in the EVFE and 2) there is no indication in the record that MILES made any attempt to confirm the end of Petitioner's employment by looking at the State Wage Records or the Work Number website.

Petitioner should note, however, that all of this could have been avoided had he more carefully read the December 14, 2012 notice of proof needed, which stated on page 2 that the Employer Verification of Earnings Form needed to be filled out and signed by the employer. Although, it is possible Petitioner was uncertain about what he should do, since he was no longer working for Sauces in December 2012 and therefore, had no anticipated earnings.

CONCLUSIONS OF LAW

The agency incorrectly terminated Petitioner's FoodShare benefits effective January 1, 2013.

THEREFORE, it is

ORDERED

MILES shall consult the state wage records or the Work Number website to verify the end of Petitioner's employment at Sauces in August 2012, since Sauces has not responded to calls from MILES. In addition, MILES shall reinstate Petitioner's FoodShare benefits effective January 1, 2013, if Petitioner is otherwise eligible. MILES shall take all necessary administrative steps to do this within 10 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

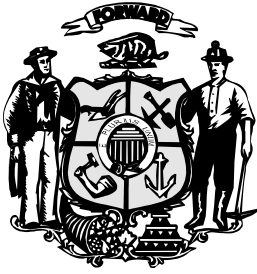
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that

Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of March, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 8, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability